

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA



CHARLES L. NAIL, JR.
BANKRUPTCY JUDGE

FEDERAL BUILDING AND UNITED STATES POST OFFICE
225 SOUTH PIERRE STREET, ROOM 211
PIERRE, SOUTH DAKOTA 57501-2463

TELEPHONE: (605) 945-4490
FAX: (605) 945-4491

July 5, 2007

John S. Lovald
Chapter 7 Trustee
Post Office Box 66
Pierre, South Dakota 57501

Roger Inman, President
Inman's, Inc.
Post Office Box 1222
Pierre, South Dakota 57501

Subject: ***In re Kenneth L. Starks and Sharon K. Starks***
Chapter 7; Bankr. No. 07-30008

Dear Trustee Lovald and Mr. Inman:

The matter before the Court is the Application for Compensation and Reimbursement filed by Trustee Lovald on behalf of Eileen Fischer of Century 21 Fischer-Rounds and Associates, Inc., to which Mr. Inman has objected on behalf of Inman's, Inc.¹ This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014.²

Kenneth L. Starks and Sharon K. Starks ("Debtors") filed a petition for relief under chapter 7 of the bankruptcy code on March 29, 2007. Among their assets, Debtors listed a home in Pierre.

¹ By letter dated June 8, 2007, Bankruptcy Clerk Frederick M. Entwistle informed Mr. Inman that while the Court had accepted his undated letter as an objection to Trustee Lovald's application for compensation, Inman's, Inc. could only appear in this matter through an attorney.

² The relevant facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

Re: *Kenneth L. Starks and Sharon K. Starks*

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John S. Lovald was appointed as the chapter 7 trustee. On May 14, 2007, Trustee Lovald filed an application to employ Eileen Fischer of Century 21 Fischer-Rounds and Associates, Inc. to sell Debtors' home. For her services, Trustee Lovald proposed to pay Ms. Fischer six percent of the sale price plus applicable sales tax. By order dated May 23, 2007, the Court granted Trustee Lovald's application to employ Ms. Fischer on those terms.

With the Court's approval, Debtors' home was sold to Mary J. Weischedel for \$181,000. On May 31, 2007, Trustee Lovald filed an application for compensation on behalf of Ms. Fischer, seeking \$11,511.60, which included both Ms. Fischer's commission and the sales tax thereon. On June 8, 2007, Inman's, Inc. filed an objection to Trustee Lovald's application for compensation.

In Inman's, Inc.'s objection to Trustee Lovald's application for compensation, Mr. Inman stated:

I am not in favor of granting Eileen Fischer total compensation for the sale of the Stark home. All creditors have had to suffer in this bankruptcy matter[,] and now is no time to add to our financial suffering. . . . I[,] too[,] would like to be paid for services and products I have already provided.

The Court certainly understands Inman's, Inc.'s desire to be paid. However, the compensation sought by Trustee Lovald on behalf of Ms. Fischer represents an administrative expense. See 11 U.S.C. §§ 330(a) and 503(b)(2). As such, it is entitled to priority over unsecured claims, such as Inman's, Inc.'s, see 11 U.S.C. § 507(a), and it must be paid in full before any distribution to unsecured creditors, such as Inman's, Inc. See 11 U.S.C. § 726(a). Consequently, the Court must overrule Inman's, Inc.'s objection to Trustee Lovald's application for compensation.

Nothing in the record suggests Ms. Fischer is not otherwise entitled to the compensation sought. The Court will therefore enter an order granting Trustee Lovald's application for compensation.

Sincerely,



Charles L. Nail, Jr.
Bankruptcy Judge

On the above date, a copy of this document was mailed or faxed to the parties shown on the Notice of Electronic Filing as not having received electronic notice and Debtor(s), if Debtor(s) did not receive electronic notice.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

cc: case file (docket original; serve copies on parties in interest)

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

Inman's Inc.
Roger Inman, President
224 W. Missouri
Box 1222
Pierre, SD 57501

Kenneth L. Starks
206 W. Maple
Harrisburg, SD 57032

Sharon K. Starks
206 W. Maple
Harrisburg, SD 57032